IN THE IOWA DISTRICT COURT FOR MILLS COUNTY

CITY OF GLENWOOD, IOWA Petitioner, v. PUBLIC EMPLOYMENT RELATIONS BOARD, Respondent, and AFSCME/IOWA COUNCIL 61 AND AFSCME LOCAL 3094-3, Intervenors.	NO. LACV 022669 RULING

ON THE 7th day February, 2002, the petition for judicial review of agency action came before the Court for contested hearing. Petitioner, City of Glenwood, Iowa (the City) appeared by its attorney Matthew G. Woods. Respondent, Public Employment Relations Board, (the Board) telephonically by counsel, Jan Berry. Intervenors, AFSCME/Iowa Council 61 and AFSCME Local 3094-3, (the Union) appeared by counsel, Michael E. Hansen. All parties have given oral arguments and submitted written briefs. Based on those materials, and on the record before the Agency, the Court finds:

The Union is the employee organization and bargaining representative for the City's police department and public works department. The existing collective bargaining agreement was due to expire June 30, 2001. The City and the Union engaged in arbitration on June 15, 2001. The Union asserted its right to arbitrate a formula to convert unused sick leave to vacation. The City objected to arbitration of that issue, arguing that the issue is a permissive subject of bargaining, and as such

not subject to arbitration over the City's objection.

The City filed a petition before the Board, seeking a ruling under 621 IAC 6.3 that the issue was not subject to arbitration over the City's objection. On September 5, 2001, the Board issued a Ruling on Negotiability Dispute. In its ruling, the Board held that the proposal at issue "is a mandatory subject of bargaining under the Iowa Code section 20.9 topic "vacations."" The City filed its petition for judicial review of agency action October 4, 2001, seeking reversal of the Board's ruling. The Board asked that the ruling be affirmed. The Union's motion to intervene was sustained. The Union also asked that the Board's ruling be affirmed.

After exhaustion of all administrative remedies, a person or party aggrieved or adversely affected may seek judicial review of a final agency action. Section 17A.19(1), Code of Iowa. The scope of judicial review is for correction of errors at law and is not de novo. *Mortimer v. Fruehauf Corp.*, 502 N.W.2d 12 (Iowa 1993). The Court is bound by the agency's findings of fact if supported by substantial evidence in the record when viewed as a whole. *Larson v. Employment Appeal Board*, 474 N.W.2d 570 (Iowa 1991). The Court should defer to agency expertise in reviewing the agency's interpretation of its rules. *Meads v. Iowa Department of Human Services*, 366 N.W.2d 555 (Iowa 1985).

The City relies on *Professional Staff Ass'n v. Public Emp. Rel. Bd.*, 373 N.W.2d 316 (Iowa 1985) to support its argument. In *Professional Staff* the bargaining representative had proposed terms addressing reimbursement for unused sick leave upon termination of employment and a severance pay formula. The employer declined to bargain on those issues and sought a PERB ruling on whether or not the issues were permissive or mandatory subjects of bargaining. PERB ruled that the subjects were permissive subjects of bargaining. The Supreme Court rejected

arguments that reimbursement for unused sick leave upon termination of employment was included in "wages" or "supplemental pay." The Court also concluded that the issue did not fall within "leave of absence" because the issue arose at termination of employment. The Supreme Court ruled that the proposals were permissive subjects of bargaining.

The PERB ruling distinguished the facts in this case from those presented in *Professional Staff*. The conversion of sick leave in *Professional Staff* was to occur at termination of employment, and thus not included within the categories defined in § 20.9: wages, supplemental pay, vacation or leave of absence. The conversion of sick leave proposed in the present case would occur annually, with the additional vacation to be used in the year following the conversion. The PERB ruled that proposal related to conversion of sick leave under those circumstances falls within "vacation" and is a mandatory subject of bargaining.

The PERB ruling in this case is consistent with its ruling in other similar cases. See *Scott County v. AFSCME*, 87 PERB 3418 (1987) and *Waterloo Community School District v. Waterloo Educational Support Personnel*, 00 PERB 6014 (2000). A sick leave conversion formula was ruled to be a permissive subject of bargaining in *City of Newton v. Newton Association of Firefighters*, 94 PERB 5077 (1994). However in *City of Newton*, the unused sick leave was to be converted into cash payments rather than vacation time. The interpretation of § 20.9 by the PERB in this case is not unreasonable or irrational. The ruling of the board is consistent with its prior rulings. The PERB ruling in this case should be affirmed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the petition for judicial review is denied, and the ruling on negotiability dispute issued by the Public Employment Relations Board on September 5, 2001 is hereby affirmed.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the court costs herein are taxed to petitioner, City of Glenwood.

SO ORDERED, ADJUDGED, AND DECREED this 13th day of February, 2002.

Timothy O'Grady

TIMOTHY O'GRADY, JUDGE
FOURTH JUDICIAL DISTRICT OF IOWA